Response by the Singapore Academy of Law to Public Consultation on Artificial Intelligence and Singapore's Intellectual Property Regime by the Ministry of Law and the Intellectual Property Office of Singapore

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- Anastasia Chen, Director, Drew & Napier LLC; Senior Accredited Specialist (Data & Digital Economy), SAL
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- Tan Wee Meng, Head of Telecommunications, Allen and Gledhill LLP; Senior Accredited Specialist (Data & Digital Economy), SAL
- Alex Toh, Partner, Magellan Law LLP; Accredited Specialist (Data & Digital Economy), SAL

[1] In alphabetical order of surname. The Singapore Academy of Law (**SAL**) similarly extends its gratitude to the other attendees who are not SAL members. The views expressed by the Participants are not necessarily the views of their respective organisation, and do not represent the views of SAL.

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8 October 2026

Contents

Background 5
Summary of response 6
More clarity is desirable for the purpose and scope of the CDA exception 7
Term "lawful" in "lawful access" is unclear 8
Effectiveness of the prohibition of contractual restrictions on the CDA exception 8
Common law test remains fit for purpose on the question of copyright subsistence 9
Other observations 10
Licensing is one possible better solution 10
International dimension of the CDA exception 10
Conclusion 11

Background

1. On 26 August 2026, the Ministry of Law (**MinLaw**) and the Intellectual Property Office of Singapore (**IPOS**) jointly launched public consultation to discuss issues concerning the interaction between artificial intelligence (**AI**) and intellectual property (**IP**) in Singapore.

2. To support this public consultation, the Singapore Academy of Law (**SAL**) convened a closed-door roundtable session on 8 September 2026 (**Roundtable**) to discuss selected issues listed in the *Public Consultation on Artificial Intelligence and Singapore's Intellectual Property Regime* (**Consultation Paper**).

3. A total of 28 individuals[2] participated in the Roundtable. They came from diverse backgrounds, including but not limited to:

    - Private practitioners specialising in IP and other technology-related practice areas;
    - In-house counsel working in rights-holder organisations and technology companies; and
    - Representatives who hold non-legal functions in technology companies and industry associations that represent rights holders and technology companies.

4. This attendee demographics enabled diverse perspectives of different players along the AI-IP value chain to be exchanged in a professional manner under one setting.

5. With SAL being a membership organisation for the legal profession in Singapore, this submission sets out the key views and observations[3] raised by Roundtable attendees who are SAL members (**Participants**) in relation to the questions listed in the Consultation Paper. It is not a transcript of the Roundtable and should not be taken as such. Given the breadth, the depth and the technicality of the issues covered by the Consultation Paper and the time limit of the Roundtable, only copyright-related questions in the Consultation Paper were discussed at the Roundtable. Accordingly, this submission by no means purports to respond comprehensively to all the questions in the Consultation Paper.

6. Further, as this submission synthesises the key views and observations of the Participants (which may not be unanimous, and which do not reflect the views of their respective organisation), it does not represent the position of SAL.

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[2] Excluding facilitators and officers from the Ministry of Law and the Intellectual Property Office of Singapore.

[3] Those views and observations represent the general consensuses of the Participants but are not always unanimous.

Summary of response

7. There was general consensus among Participants that more clarity would be desirable in relation to the purpose and scope of the computational data analysis (**CDA**) exception under the Copyright Act 2021 (**Act**):[4] first, how the CDA exception interacts with the fair use exception in the Act; second, whether the nature of generative AI models warrant a policy review that the CDA exception should continue applying to generative AI models.

8. There was broad consensus among Participants that the term "lawful" in the context of the CDA exception was unclear, and that access in breach of contract was “unlawful” for the purpose of section 244(2)(d) of the Act.

9. There was also consensus among Participants that the common law test of sufficient engagement with the human intellect in finding copyright subsistence remained fit for purpose today and that matters such as whether a piece of work is “AI-generated” or “AI-assisted” should be left to the courts to decide based on the facts of each case.

10. Views on other disparate issues are noted separately below under different headings.

[4] Copyright Act 2021 (**Act**), Part 5 “Permitted Uses of Copyright Works and Protected Performances”, Division 8 “Computational data analysis”.

More clarity is desirable for the purpose and scope of the CDA exception

11. A majority of Participants questioned the policy intent that the CDA exception under the Act should apply to generative AI. Two key reasons were cited as giving the basis for a review of that policy intent. First, the CDA exception was introduced before the emergence of generative AI. Second, the purpose of introducing the CDA exception, as expressed by the Government then,[5] was to facilitate the performance of data analysis, or in the words of one Participant, "to find connection between data".

12. Participants expressed this view despite the Consultation Paper expressly stating that the CDA exception is "intended to apply to machine learning for all types of technologies, including generative AI…" and that this approach "aligns with a purposive interpretation".[6]

13. Despite the clarification in the Consultation Paper, some Participants argued that although the text of the CDA exception was broad enough to cover the training of generative AI models, actions taken by relying on this exception have moved beyond "data" (i.e., mere facts) to "expression" and have resulted in the creation of "new expressive works". Further, the expressed intention of the Government then was to introduce safeguards to protect rights holders' interests, including "conditions to preserve and protect rights holders' commercial interests and freedom to conduct business based on licensing and subscription models",[7] but generative AI models are adversely affect rights holders' commercial interests in ways that earlier AI models did not. For these Participants, such factors make it timely for a re-examination of the scope of the CDA exception. In this connection, Participants mentioned that factors such as the actual volume of CDA or model training being performed in Singapore should be studied to assess the economic benefits that the CDA exception is designed to bring in.

14. To be clear, the comments from these Participants call for a review of the policy concerning whether the CDA exception, which applies to all machine learning models (including generative models), should continue applying to generative models. Some Participants further commented that the purpose and scope of the CDA exception was the "elephant in the room" as compared to other questions in the Consultation Paper, such as whether access in breach of contract is unlawful (see below).

15. Participants also discussed whether the CDA exception was the right vehicle to address the use case that is the subject of litigation and/or debate around the world today, i.e.,

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5 Singapore Copyright Review Report (17 January 2019, Ministry of Law and Intellectual Property Office of Singapore), pp 32 to 34.

6 Public Consultation on Artificial Intelligence and Singapore's Intellectual Property Regime (26 August 2026, Ministry of Law and Intellectual Property Office of Singapore) (**Consultation Paper**), p 8. Participants made relevant comments despite acknowledging the position taken by the Consultation Paper. It should also be noted that the illustration to section of 243(b) of the Act uses machine learning as an example of what computation data analysis covers. Generative models are machine learning models.

7 Singapore Copyright Review Report (17 January 2019, Ministry of Law and Intellectual Property Office of Singapore) at para 2.8.5.

the use of generative AI to create competing or derivative works. Views were expressed that the fair use exception was better suited to deal with this issue. This is because the CDA exception focuses solely on the use of works for the development of AI systems. In contrast, the multi-factorial test under the fair use exception allows the court to consider complexities such as whether the innovation is applied in the same or different markets and whether the innovation directly competes with or is a substitute for the copyrighted works. The fair use exception is thus better suited to address the balance between innovation and the economic impact of new technologies such as generative AI. Since the Act contains both the CDA exception and the fair use exception, it may be helpful for a clearer demarcation of when each of these exceptions should be applied.

Term “lawful” in “lawful access” is unclear

16. Participants were of the view that the term "lawful" in the context of the CDA exception was unclear. Those commenting directly on whether access in breach of contract was “unlawful” for the purpose of section 244(2)(d) of the Act all believed that such access was unlawful.

17. Broadly, Participants shared the following views:

    - Lawful access should not be considered in vacuum, and all elements have to be considered together to decide what is lawful access; and
    - Unlawful acts under section 244(2)(d) of the Act were not restricted to criminal offenses. Examples given in support of this view included the economic tort of unlawful conspiracy, and the “all-encompassing” definition of what lawful access is by the European Union.[8]

18. There was a difference in opinion over if and how further clarity could be provided on lawful access. A view was expressed that it may be helpful to elevate the illustration in section 244(2)(d) of the Act to a deeming provision in order to address the ambiguity concerning what qualifies as lawful access. The broader policy question was whether one wanted to “shine a light” on deeming provisions because doing so may invite litigation over the deeming provision.

Effectiveness of the prohibition of contractual restrictions on the CDA exception

19. Participants also pointed out statutory provisions that may be contradictory and therefore would render ineffective the statutory prohibition to exclude or restrict the CDA exception by contractual terms. Specifically, one Participant pointed out the inconsistency between section 186(2) of the Act which says, in simplified terms, that individually negotiated, fair and reasonable contract terms between a rights holder and another party are valid and section 187(c) of the Act which voids contract terms that purport, directly or indirectly, to exclude or restrict the operation of the CDA exception.

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8 See, for example, Directive (EU) 2019/790 of the European Parliament and of the Council of 17 April 2019 on copyright and related rights in the Digital Single Market and amending Directives 96/9/EC and 2001/29/EC, European Union (EU), preamble 14.

Common law test remains fit for purpose on the question of copyright subsistence

20. Participants were generally[9] of the view that the common law test of sufficient engagement of the human intellect in finding copyright subsistence remained fit for purpose and that there was no need to "renovate" this test. Some Participants pointed out that the issues brought about by generative AI today were not substantively different from the issues seen in the past and that the same common law test had always been able to address those issues despite the emergence of new technologies and practices. If the goal were to encourage more transparency in how a piece of work is created, some Participants suggested several policy levers for consideration, such as requiring creators to declare sources, labelling (whether mandatory or industry-led) of works generated by AI, etc., while acknowledging the limitations of each.

21. As the circumstances surrounding human involvement in the creative process are highly fact-specific, the general view was that the courts are best placed to deal with these issues on a case-by-case basis. For the same reason, it is both challenging and unnecessary for guidance, e.g., guidance on what kind of acts by human demonstrate human creativity, to be provided in this aspect. Such guidance, even if provided, may be of limited help to the court undertaking the interpretive exercise as *ex post* guidance is not helpful for discerning the policy intent at the time the relevant statutory provisions were enacted. One Participant suggested that as what constitutes human authorship was substantially a question of fact while what does not constitute human authorship was a question of law, a better policy balance might be to draw clearer boundaries around what is not acceptable.

[9] One Participant expressed preference for instituting a sui generis right for AI-generated works but also acknowledged that doing so would open the Pandora's box.

Other observations

22. This section sets out other observations raised by more than one Participant during the course of the Roundtable that were not specifically related to the questions listed in the Consultation Paper. No consensus was reached among Participants on these observations.

Licensing is one possible better solution

23. Several Participants mentioned that licensing may be a better solution to address the economic impact of the CDA exception on rights holders.[10] This is especially so given the difficulties surrounding the utility of contractual restrictions in practice as mentioned earlier.

24. Those Participants commented that licensing gave technology companies the certainty that they *have* obtained permission from rights holders to use their works and rights holders could also (hopefully) be reasonably compensated to share the economic benefits the CDA exception is designed to bring in. Licensing may also alleviate the perception that technology companies are enjoying "commercially successful free rides" at present.

International dimension of the CDA exception

25. Participants made repeated references to the international dimension of the CDA exception, including examples where the existence of the CDA exception has led overseas players to decide to conduct model training in Singapore. However, Participants queried the extraterritorial applicability of the CDA exception, such as to what extent will a generative AI model which is trained in Singapore by leveraging the CDA exception be "accepted" in other jurisdictions that do not have an equivalent exception. The number of jurisdictions that have a CDA-equivalent exception was noted to be very small globally.

26. The interaction between the Berne Convention for the Protection of Literary and Artistic Works and the CDA exception in the Act was raised as another issue of international dimension that is not addressed presently. For example, one Participant queried whether the CDA exception satisfies the three-step test in the Convention that sets limits on when countries can allow exceptions or limitations to copyright protection.[11]

27. The extraterritorial application of the Act in general was, as one Participant put it, "a much bigger elephant in the room" as it may affect the attractiveness of Singapore as a place for model development for global deployment.

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[10] See also para 13 above.

[11] Berne Convention for the Protection of Literary and Artistic Works, Art 9(2).

Conclusion

28. SAL hopes that this submission of key observations and views raised by Participants at the Roundtable, although incomplete, will nevertheless assist MinLaw and IPOS as the Government continues the work to "ensure thoughtful, carefully calibrated IP frameworks that can continue to support innovation while protecting the interests that underpin human creativity and ingenuity".

29. Questions regarding this submission may be directed to enquiries@sal.org.sg with the email subject *Submission to Public Consultation on Artificial Intelligence and Singapore's Intellectual Property Regime* (attention to Catherine Shen).